

REMARKS

Applicant respectfully traverses the 35 U.S.C. § 102(b) rejection of claims 2, 3, 8-11, and 14 over U.S. Patent 5,518,272 to Fukagawa.

Anticipation under § 102(b) requires that every element of the claims be disclosed, either expressly or inherently, in a single prior art reference. In support of the § 102(b) rejection, the Office Action, at page 2, lines 11-22 addresses the following claim elements, and cites allegedly corresponding structures in Fukagawa: a first and a second fuel tank, wherein the second tank is lower than the first tank; a longitudinal movement stopping device redirecting longitudinal movement of the first tank; a weakened portion fixed to a bottom of the support structure which has a width less than the other portion of the support structure; and a falling out preventing structure.

The Office Action fails to address, however, and Fukagawa fails to disclose, either expressly or inherently, the following feature recited in claim 2:

“wherein the weakened portion breaks when the downward biasing force applied to the second fuel tank is equal to or greater than a predetermined value.”

As recited in the claim 2, the weakened portion, which is configured to break when the downward biasing force is equal to or greater than a predetermined value, is defined by a portion of the second fuel tank support having a second transverse width less than a first transverse width of the second fuel tank support. The Office Action alleges that section 22, shown in Fig. 1 of Fukagawa has a smaller diameter; however, this alleged smaller diameter is not visible in Fig. 1 and is not expressly or inherently disclosed anywhere in the specification. Moreover, as recited in amended claim 2, the weakened portion has a second transverse width shorter than a first transverse width of the second fuel tank support, as shown, e.g., in as-filed Fig. 2. Section 22 of

Fukagawa, if it is a weakened portion, which the Office Action fails to establish, does not have a second smaller transverse width.

The Office Action further alleges that element 10f in Fukagawa redirects longitudinal movement of the first tank, and that section 22 fixed to the bottom of the support structure is weakened due to a width less than widths of other portions. These disclosures, however, do not *ipso facto* indicate that section 22 is configured to break when a longitudinal force is redirected from a longitudinal movement of a first full tank, by a longitudinal movement stopping device, into a downward biasing force on a second fuel tank, thereby moving the second fuel tank in a downward direction, and the downward biasing force is equal to or greater than a predetermined value, as recited, e.g., in claim 2.

Fukagawa further does not expressly disclose that the first tank is biased downward onto the second tank, which in turn is biased downward onto portion 22 of the support structure, until a redirected downward biasing force causes portion 22 to break when the downward biasing force is equal to or greater than the predetermined value. Nor does Fukagawa inherently disclose such a result. Inherency under U.S. law does not include a possible or even a probable result of a prior art disclosure. For the claimed element to be inherent in a prior art reference, it must be a necessary result. Fukagawa expressly discloses that the disclosed fuel tank support structure has enhanced and improved rigidity (col. 2, line 16; col. 4, lines 63-66). Breakage of element 22 of Fukagawa upon application of a downward biasing force on the second fuel tank equal to or greater than a predetermined value, therefore, appears at best to

be a possible result, not a necessary result of the Fukagawa disclosure, and therefore this claim feature is non-inherent.

The Office Action also has failed to address all of the features of the claimed longitudinal movement stopping device set forth in claim 2. The alleged longitudinal movement stopping device 10f of Fukagawa is a mounting point, where element 10c is mounted to element 30. Even assuming that mounting point 10f stops longitudinal movement of the first fuel tank, it would not, based on its position and configuration, “redirect the longitudinal movement of the first fuel tank to apply a downward biasing force to the second fuel tank, thereby moving the second fuel tank in a downward direction, toward the vehicle floor.” Fukagawa does not disclose this claimed movement of the two tanks, or disclose creation of a downward biasing force, redirected or otherwise, and in view of the spacing of the tanks, and location of element 10f, such movement and downward biasing force, would not occur.

Lacking an express or implied disclosure of at least these elements of claim 2, Fukagawa does not anticipate claim 2, or its dependent claims 3, 5-11, and 14, under § 102(b).

In order to clarify the above features of claim 2, Applicant has amended claim 2 to recite that “the second fuel tank support has a length and a first transverse width, with one portion along the length defining a weakened portion having a second transverse width shorter than the first transverse width,” and “the weakened portion is configured to break when the downward biasing force applied to the second fuel tank is equal to or greater than a predetermined value.”

Applicant also respectfully traverses the 35 U.S.C. § 103(a) rejection of claim 13 over Fukagawa. The Office Action alleges that it would have been obvious to include an additional fuel tank to provide additional reserve fuel. Claim 13, due to its dependence from claim 2, incorporates all of the features of claim 2. For all of the reasons discussed above, Fukagawa fails to disclose, expressly or inherently, all of the claimed features of the fuel tank supporting structure. Fukagawa also fails to suggest these features and no other teaching of the prior art, common knowledge, or common sense, is readily combinable with Fukagawa with a predictable result of producing the claimed fuel tank support structure. The Office Action argues at page 2, lines 15-16, that Fukagawa discloses section 22 having a width less than other portions. Fukagawa does not suggest, however, a fuel tank support structure having a length and a first transverse width with one portion along the length defining a weakened portion having a second transverse width shorter than the first transverse width . . . wherein the weakened portion is configured to break when the downward biasing force applied to the second fuel tank is equal to or greater than a predetermined value,” as recited in claim 2. Not only does Fukagawa not suggest such breaking upon application of a downward force greater to or equal to a predetermined value, Fukagawa teaches away from this configuration, because it expressly teaches improved and enhanced rigidity of the fuel tank support structure. Furthermore, because of the structure of Fig. 3, with the two tanks spaced apart, and element 10f positioned below the second/lower tank, Fukagawa also teaches away from the claimed first tank having its longitudinal movement redirected onto the second tank, creating a downward biasing force biasing the second tank down toward the vehicle floor. For at least these reasons, one of

ordinary skill at the time of the invention would not have found substitution for element 22 of a weakened portion configured to break upon application of a downward force equal to or greater than a predetermined value to be a simple substitution of known structures with a predictable result, and hence claim 13 is non-obvious over Fukagawa.

Applicant further traverses the § 103(a) rejection of claims 7 and 15 over Fukagawa in view of U.S. Patent 1,523,370 to Skaggs. The Office Action cites Skaggs for its teaching of an order of drawing fuel from first and second tanks, not for any additional teaching related to fuel tank support structure. Skaggs fails to disclose or suggest a fuel tank support structure having a weakened portion configured to break upon application of a downward biasing force equal to or greater than a predetermined value. Combination of this reference with Fukagawa, therefore, fails to suggest the features of claim 2, or its dependent claims 7 and 15.

For all of the above reasons, claims 2, 7, and 15 are patentable over Fukagawa and Skaggs.

Applicant has added new claims 16 and 17 to round out coverage to which it is entitled. Claim 16 recites that the longitudinal movement stopping device is positioned at a third height above the floor of the vehicle, the third height being higher than the second height. This feature is depicted in Fig. 1, and is not new matter. In contrast, Fukagawa discloses that structure 10f, cited in the Office Action as allegedly corresponding to the claimed movement stopping device, is positioned below second fuel tank 3, *i.e.*, at a third height lower than the height of the second height (of the second fuel tank).

Claim 17 recites that the falling out preventing structure comprises first and second cross rails supporting the second fuel tank support, the first and second cross rails positioned to abut against and support the second fuel tank upon breakage of the second fuel tank support and movement of the second fuel tank a predetermined distance toward the vehicle floor. This feature is disclosed on page 9, lines 1-4, and Fig. 1, and is not new matter. This structure is not disclosed or suggested in Fukagawa or Skaggs. Cross rails 11 and 12 of Fukagawa, cited in the Office Action as allegedly corresponding to a falling out preventing structure, do not abut against the second fuel tank support rail "upon breakage of the fuel tank support and movement of the second fuel tank a predetermined distance toward the vehicle floor." The cross rails 11 and 12 are fixed to unbroken supports for the respective tanks because the Fukagawa support structure is not configured to break upon application of a predetermined redirected downward biasing force, so cross rails 11 and 12 are not positioned or configured to abut against and support the second fuel tank upon breaking of a second fuel tank support.


In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of claims 2 and 7-17.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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